

## Message Text

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ORIGIN EA-10

INFO OCT-01 ISO-00 L-02 JUSE-00 SSO-00 SCA-01 INR-07

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DRAFTED BY EA/J:EGBROWN:L/M/SCA:CLBLAKESLEY:CB

APPROVED BY EA/J:WPIEZ

DOJ - MR. MCLAUGHLIN

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FM SECSTATE WASHDC

TO AMEMBASSY TOKYO IMMEDIATE

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E.O. 11652: N/A

TAGS: GEN, JA

SUBJECT: DEPARTMENT OF JUSTICE DEPOSITION REQUEST

REF: TOKYO 16493

1. DEPARTMENT HAS REVIEWED CONSULAR CONVENTION AND RELEVANT CFR AND FAM PROVISIONS AND BELIEVES THAT TAKING OF DEPOSITIONS AS FORESEEN IN THIS INSTANCE (THAT IS WITH CONSULAR OFFICER PRESIDING, PROSECUTION AND DEFENSE REPRESENTED AND QUESTIONING WITNESSES) IS WITHIN THE PURVIEW OF THE CONSULAR CONVENTION. DEPOSITION IS DEFINED BY 22 CFR 92.49 AS BEING TESTIMONY OF A WITNESS TAKEN UNDER OATH OR AFFIRMATION, BEFORE SOME DESIGNATED OR APPOINTED PERSON OR OFFICER, IN ANSWER TO INTERROGATORIES, ORAL OR WRITTEN. THE TAKING OF SUCH TESTIMONY BY A CONSULAR OFFICER IN JAPAN IS WHAT THE CONSULAR CONVENTION 'SUB-SECTION ON DEPOSITIONS WAS ESTABLISHED TO ACCOMPLISH. THE LANGUAGE OF THE CONSULAR CONVENTION DOES NOT RESTRICT THE TYPE OF DEPOSITIONS THAT CAN BE TAKEN. THE POSITION OF THE DEPARTMENT OF STATE, THEREFORE, IS THAT DEPOSITIONS TAKEN FOR ANY PURPOSE CONSISTENT WITH THE UNITED STATES AND JAPANESE LAW ARE COVERED BY THE TERMS OF THE CONSULAR UNCLASSIFIED

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CONVENTION.

2. REGARDING THE QUESTION OF THE PROCEDURE FOR TAKING

DEPOSITIONS. THE CONSULAR CONVENTION DOES NOT PROHIBIT THE COUNSEL FOR EITHER OR BOTH SIDES IN A CIVIL OR CRIMINAL TRIAL FROM POSING THE WRITTEN OR ORAL INTER-ROGATORIES. THE REGULATIONS FOR TAKING DEPOSITIONS PROVIDE THAT THE CONSULAR OFFICER SHOULD COMPLY WITH ANY REQUEST OR SPECIAL INSTRUCTIONS WHICH ACCOMPANY THE REQUEST FOR A DEPOSITION (22 CFR 92.56). THE COUNSEL FOR BOTH PARTIES HAVE THE RIGHT TO CONDUCT DIRECT AND CROSS EXAMINATION (22 CFR 92.57). BOTH OF THE ABOVE-TWO REGULATIONS ARE REFLECTED IN 7 FAM 842.3. IT IS CLEAR, THEREFORE, THAT THE TERM DEPOSITION INCORPORATED INTO OUR CONSULAR CONVENTIONS COMPREHENDS THE TYPE OF DEPOSITION ENVISIONED IN THE INSTANT CASE.

3. FYI:DEPARTMENT BELIEVES THAT THERE ARE AMPLE EXAMPLES OF SUCH TESTIMONY BEING TAKEN IN CIVIL CASES. THE ONLY CRIMINAL CASE TESTIMONY WE CAN IMMEDIATELY LOCATE INVOLVES THE JOHN HAY CASE IN WHICH TESTIMONY WAS TAKEN IN THE MANNER FORESEEN IN THIS INSTANCE IN SWITZERLAND. EVEN THOUGH THERE WAS NO CONSULAR CONVENTION IN FORCE AT THE TIME BETWEEN SWITZERLAND AND THE US, THE TESTIMONY WAS TAKEN UNDER AN AD HOC, ONE TIME PROCEDURE ARRANGED WITH THE COOPERATION OF THE SWISS GOVERNMENT. HOWEVER, DEPARTMENT DOES NOT BELIEVE THE PURSUIT OF PRECEDENTS WILL PROVIDE RAPID SOLUTION OF PRESENT DIFFICULTIES. END FYI.

4. THE DEPARTMENT HAS CONSIDERED THE FIRST ALTERNATIVE PROPOSED IN PARA FOUR REFTTEL, BUT BEEN FORCED TO REJECT IT BECAUSE OF HABEUS CORPUS PROBLEMS MENTIONED REFTTEL. DEPARTMENT HAS NOT HAD TIME TO FULLY EXPLORE RAMIFICATIONS OF SECOND ALTERNATIVE, BUT BELIEVES IT MAY BE A SUCCESSFUL WAY OUT OF OUR DIFFICULTIES. IF WITNESS WILL VOLUNTARILY AGREE TO COME TO EMBASSY BRIEFLY FOR PURPOSES OF TESTIMONY, AND IF JAPANESE ARE PREPARED TO PERMIT WITNESS TO ENTER ONTO EMBASSY'S GROUNDS WHERE THEY ARE LEGALLY BEYOND JAPANESE JURISDICTION, IT MAY BE POSSIBLE  
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TO PROCEED IN THIS FASHION. EMBASSY IS REQUESTED TO TENTATIVELY AND INFORMALLY SOUND OUT JAPANESE ON THIS POSSIBILITY TO SEE IF IT MIGHT RESOLVE THEIR DIFFICULTIES. DEPARTMENT WILL GIVE EMBASSY FULLER READING ON OUR VIEW OF THIS ALTERNATIVE BY CABLE TOMORROW.

DETAILS OF PRESENT CASE. DEA OFFICERS ARE AUTHORIZED TO BRIEF JAPANESE AND RESPOND TO THEIR QUESTIONS. KISSINGER

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## Message Attributes

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**Review Content Flags:**  
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**Subject:** DEPARTMENT OF JUSTICE DEPOSITION REQUEST  
**TAGS:** CFED, CGEN, JA  
**To:** TOKYO  
**Type:** TE  
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